

AMENDED IN ASSEMBLY APRIL 8, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2035

Introduced by Assembly Member Frusetta

January 10, 1996

An act to amend Section 186.22 of, and to repeal Section 186.27 of, the Penal Code, relating to street terrorism.

LEGISLATIVE COUNSEL'S DIGEST

AB 2035, as amended, Frusetta. Street terrorism.

~~Under existing law, the California Street Terrorism Enforcement and Prevention Act, which prohibits any person from, among other things, actively participating in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, is repealed as of January 1, 1997.~~

(1) Existing law, entitled the California Street Terrorism Enforcement and Prevention Act, provides that any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members shall be punished by an additional term of 2, 3, or 4 years, at the court's discretion, if the felony is committed on the grounds of, or within 1,000 feet of, a school during hours in which the facility is open for classes or school related programs or when minors are using the facility.

This bill instead would impose this additional term if the felony is committed in a place that any person who commits the felony knows, or reasonably should know, is a school zone, as defined.

The bill would also provide that any person convicted of a misdemeanor committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, 2 or 3 years. By increasing the penalty for an existing crime, this bill would create a state-mandated local program.

This bill would require that these additional terms be imposed in addition to any other punishment provided by law and notwithstanding any limitation contained in any other provision of law.

(2) Existing law defines “pattern of criminal gang activity” as the commission of, attempted commission of, or solicitation of 2 or more specified offenses if at least one of these offenses occurred after the effective date of the California Street Terrorism Enforcement and Prevention Act, the last of these offenses occurred within 3 years after a prior offense, and the offenses were committed on separate occasions, or by 2 or more persons.

This bill would include in this definition a sustained juvenile petition for, or conviction of, 2 or more of these offenses, and would change when the last offense occurred to within 5 years after a prior offense. The bill would additionally include among the specified offenses conspiracy to commit any of these offenses, as defined, and threats to commit a crime, as defined.

The bill would also authorize testimony by an expert on gangs and gang activity regarding matters covered by the California Street Terrorism Enforcement and Prevention Act. This authorization would extend to hearsay information submitted by law enforcement personnel or contained in court documents and would declare that this expert testimony is sufficient, without further corroboration, to prove the truth of the matter expressed in the opinion of the expert.



(3) *Under existing law, the California Street Terrorism Enforcement and Prevention Act is repealed as of January 1, 1997.*

This bill would repeal this repeal date, thereby extending the operation of the provisions of the act indefinitely. Because this bill would extend the duration of provisions that establish crimes, it would create a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 186.22 of the Penal Code is~~
2 ~~amended to read:~~
3 ~~186.22. (a) Any person who actively participates in~~
4 ~~any criminal street gang with knowledge that its~~
5 ~~members engage in or have engaged in a pattern of~~
6 ~~criminal gang activity, and who willfully promotes,~~
7 ~~further, or assists in any felonious criminal conduct by~~
8 ~~members of that gang, shall be punished by~~
9 ~~imprisonment in a county jail for a period not to exceed~~
10 ~~one year, or by imprisonment in the state prison for 16~~
11 ~~months, or 2 or 3 years.~~
12 ~~(b) (1) Except as provided in paragraph (2), any~~
13 ~~person who is convicted of a felony committed for the~~
14 ~~benefit of, at the direction of, or in association with any~~
15 ~~criminal street gang, with the specific intent to promote,~~
16 ~~further, or assist in any criminal conduct by gang~~
17 ~~members, shall, upon conviction of that felony, in~~
18 ~~addition and consecutive to the punishment prescribed~~
19 ~~for the felony or attempted felony of which he or she has~~
20 ~~been convicted, be punished by an additional term of one,~~
21 ~~two, or three years at the court's discretion. However, if~~
22 ~~the underlying felony is committed on the grounds of, or~~

~~within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.~~

~~(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.~~

~~(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.~~

~~(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.~~

~~(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:~~

1 ~~(1) Assault with a deadly weapon or by means of force~~
2 ~~likely to produce great bodily injury, as defined in Section~~
3 ~~245.~~

4 ~~(2) Robbery, as defined in Chapter 4 (commencing~~
5 ~~with Section 211) of Title 8 of Part 1.~~

6 ~~(3) Unlawful homicide or manslaughter, as defined in~~
7 ~~Chapter 1 (commencing with Section 187) of Title 8 of~~
8 ~~Part 1.~~

9 ~~(4) The sale, possession for sale, transportation,~~
10 ~~manufacture, offer for sale, or offer to manufacture~~
11 ~~controlled substances as defined in Sections 11054, 11055,~~
12 ~~11056, 11057, and 11058 of the Health and Safety Code.~~

13 ~~(5) Shooting at an inhabited dwelling or occupied~~
14 ~~motor vehicle, as defined in Section 246.~~

15 ~~(6) Discharging or permitting the discharge of a~~
16 ~~firearm from a motor vehicle, as defined in subdivisions~~
17 ~~(a) and (b) of Section 12034.~~

18 ~~(7) Arson, as defined in Chapter 1 (commencing with~~
19 ~~Section 450) of Title 13.~~

20 ~~(8) The intimidation of witnesses and victims, as~~
21 ~~defined in Section 136.1.~~

22 ~~(9) Grand theft, as defined in Section 487, when the~~
23 ~~value of the money, labor, or real or personal property~~
24 ~~taken exceeds ten thousand dollars (\$10,000).~~

25 ~~(10) Grand theft of any vehicle, trailer, or vessel, as~~
26 ~~described in Section 487h.~~

27 ~~(11) Burglary, as defined in Section 459.~~

28 ~~(12) Rape, as defined in Section 261.~~

29 ~~(13) Looting, as defined in Section 463.~~

30 ~~(14) Moneylaundering, as defined in Section 186.10.~~

31 ~~(15) Kidnapping, as defined in Section 207.~~

32 ~~(16) Mayhem, as defined in Section 203.~~

33 ~~(17) Aggravated mayhem, as defined in Section 205.~~

34 ~~(18) Torture, as defined in Section 206.~~

35 ~~(19) Felony extortion, as defined in Sections 518 and~~
36 ~~520.~~

37 ~~(20) Felony vandalism, as defined in paragraph (1) of~~
38 ~~subdivision (b) of Section 594.~~

39 ~~(21) Carjacking, as defined in Section 215.~~

~~(22) The sale, delivery, or transfer of a firearm as described in Section 12072.~~

~~(23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.~~

~~(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (23), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.~~

SECTION 1. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or ~~2 two~~ or ~~3 three~~ years.

(b) (1) Except as provided in paragraph ~~(4)~~ (2), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years ~~at the court's discretion~~. *However, any person who commits this felony in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (1) of subdivision (e) of Section*

1 626.9, shall be punished by an additional term of two,
2 three, or four years.

3 ~~(2) If the underlying felony described in paragraph~~
4 ~~(1) is committed on the grounds of, or within 1,000 feet~~
5 ~~of, a public or private elementary, vocational, junior high,~~
6 ~~or high school, during hours in which the facility is open~~
7 ~~for classes or school-related programs or when minors are~~
8 ~~using the facility, the additional term shall be two, three,~~
9 ~~or four years, at the court's discretion.~~

10 ~~(3)~~ The court shall order the imposition of the middle
11 term of the sentence enhancement, unless there are
12 circumstances in aggravation or mitigation. The court
13 shall state the reasons for its choice of sentence
14 enhancements on the record at the time of the
15 sentencing.

16 ~~(4)~~

17 (2) Any person who violates this subdivision in the
18 commission of a felony punishable by imprisonment in
19 the state prison for life, shall not be paroled until a
20 minimum of 15 calendar years have been served.

21 (c) Any person who commits a public offense
22 punishable as a misdemeanor which is committed for the
23 benefit of, at the direction of, or in association with any
24 criminal street gang, with the specific intent to promote,
25 further, or assist in any criminal conduct by gang
26 members, shall be punished by imprisonment in a county
27 jail for a period not to exceed one year, or by
28 imprisonment in the state prison for 16 months, or two or
29 three years.

30 (d) If the court grants probation or suspends the
31 execution of sentence imposed upon the defendant for a
32 violation of subdivision (a) or (c), or in cases involving a
33 true finding of the enhancement enumerated in
34 subdivision (b), the court shall require that the defendant
35 serve a minimum of 180 days in a county jail as a condition
36 thereof.

37 ~~(d) Notwithstanding any other law, the court may~~
38 ~~strike the additional punishment for the enhancements~~
39 ~~provided in this section or refuse to impose the minimum~~
40 ~~jail sentence for misdemeanors in an unusual case where~~

~~the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.~~

(e) *The additional terms imposed pursuant to this section shall be in addition to any other punishment provided by law and shall be imposed notwithstanding any limitation contained in any other provision of law.*

(f) As used in this chapter, “pattern of criminal gang activity” means the commission of, attempted commission of, ~~or~~ solicitation of, *sustained juvenile petition for, or conviction of* two or more of the following offenses, provided at least one of ~~those~~ *these* offenses occurred after the effective date of this chapter and the last of those offenses occurred within ~~three~~ *five* years after a prior offense, and the offenses ~~are~~ *were* committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(8) The intimidation of witnesses and victims, as defined in Section 136.1.

(9) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars (\$10,000).

(10) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

(14) Moneylaundering, as defined in Section 186.10.

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

(17) Aggravated mayhem, as defined in Section 205.

(18) Torture, as defined in Section 206.

(19) Felony extortion, as defined in Sections 518 and 520.

(20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(21) Carjacking, as defined in Section 215.

(22) The sale, delivery, or transfer of a firearm as described in Section 12072.

(23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.

~~(f)~~

(24) Conspiracy to commit any of the offenses listed in this subdivision, as conspiracy is defined in paragraph (1) of subdivision (a) of Section 182.

(25) Threats to commit a crime, as defined in Section 422.

(g) As used in this chapter, “criminal street gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to ~~(23)~~ (25), inclusive, of subdivision ~~(e)~~ (f), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

~~(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.~~

(h) (1) A duly qualified expert on gangs and gang activity may testify, based solely on hearsay information received from law enforcement officers or contained in reports of law enforcement personnel or in court documents, regarding matters covered by this chapter that are the proper subject of expert opinion as set forth in Sections 801 to 805, inclusive, of the Evidence Code, including, but not limited to, the following:

(A) Whether an offense is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members.

(B) Whether a person is a member of any criminal street gang.

(C) Whether an offense is gang motivated.

(D) Whether a gang has as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, of subdivision (f).

(2) This expert testimony, without further corroboration, is sufficient to prove the truth of the matter expressed in the opinion of the expert.

SEC. 2. Section 186.27 of the Penal Code is repealed.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act

1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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